

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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In the Matter of)	
)	
Implementation of the Cable Television Consumer)	MB Docket No. 07-29
)	
Protection and Competition Act of 1992)	
)	
Development of Competition and Diversity)	
in Video Programming Distribution:)	
Section 628(c)(5) of the Communications Act:)	
)	
Sunset of Exclusive Contract Prohibition)	
)	
Review of the Commission's Program Access Rules)	MB Docket No. 07-198
and Examination of Programming Tying)	
Arrangements)	
)	
)	

To the Commission:

**REPLY COMMENTS OF
PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY**

Public Utility District No.1 of Chelan County, Washington, (the "District"), a Washington municipal corporation, hereby submits these reply comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding. Specifically, the District files these reply comments in support of the Commission taking steps to ensure that video programmers are not able to deny access to programming over shared headend facilities.

I. THE FCC SHOULD PREVENT PROGRAMMERS FROM RESTRICTING ACCESS TO SHARED HEADENDS

A. Background

The District has constructed and continues to construct a state-of-the-art fiber-to-the-home system that makes voice, video, data, and other advanced communications services available throughout Chelan County, Washington. The District's fiber network has allowed for the introduction of broadband communications capabilities in rural Washington.

Under Washington State law, however, public utility districts are prohibited from offering retail telecommunications services. As a result, the District offers its fiber network on a wholesale basis to retail service providers who, in turn, provide telephone, broadband, and cable service to end-user customers on a competitive basis.¹

In order for these small, independent retail providers to be able to offer cable service programming that is competitive with the programming offered by the large incumbent cable operators, the retail service providers utilize a shared headend facility that is owned and maintained by the District.

B. The Use of Shared Headends Is Vital to the Development of Competitive Broadband Video Services in Rural Markets

¹ Under Section RCW 54.16.330 of the Washington Code, public utility districts are only authorized to own and operate telecommunications systems "for the provision of wholesale telecommunications services." As defined under the Washington Code, the term "telecommunications service" has been interpreted as including cable services as among the service that Washington PUDs can only provide on a wholesale basis.

Obtaining affordable access to program content is one of the most fundamental challenges currently facing new, small, rural broadband entrants. Even under the best of circumstances, it is often a costly and lengthy process. The Commission's recent extension of its ban on exclusive programming access contracts is an important step that will contribute to healthy competition in the cable industry and to greater broadband deployment in rural areas. At the same time, for entities such as the District and its retailers, it is essential that the Commission take additional steps to eliminate unduly burdensome and unnecessary barriers to affordable, competitive program access.

In particular, the Commission should recognize the value of shared headends and to promote their use by small, rural broadband video providers. As the United States Telecom Association ("USTA") correctly notes, "shared headends are an important component for many small video entrants competing in today's market. Their use provides an economic means for multiple rural MVPDs to provide video service in a high-cost area."² The National Telecommunications Cooperative Association ("NTCA") echoes this point, observing that "[m]any small rural video providers would not be able to offer video services if they could not jointly purchase/lease a shared headend with other small video providers."³

The small retail service providers offering cable services through the use of the District's network most certainly would not be able to afford the cost of individually

² USTA Comments at 17.

³ NTCA Comments at 27.

acquiring and maintaining their own headends. Moreover, this issue is compounded in Washington by the fact that the District itself is prevented by State law from providing retail cable services directly over its own headend.

C. Program Providers Should Not Be Permitted to Deny Access to Programming Solely on the Basis of a Shared Headend

Unfortunately, as a number of commenters demonstrate, video programming providers often impose restrictions, and, in some cases outright prohibitions, on the licensing of programming to systems utilizing shared headends. According to a survey by the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), “28 percent of respondents reported facing the prospect of being cut off from programming due to a potentially irresolvable dispute stemming from a programmer’s objection to the use of shared headends.”⁴

The District’s own experience has been the same. While not all video providers have objected to the use of a shared headend, some of the District’s video programming suppliers have held up negotiations and/or threatened to prohibit the carriage of their programming, unless each retail cable service provider on the District’s network purchases its own stand-alone headend or purchases a separate receiver to undertake individual encryption. The costs associated with these demands are prohibitive. Not only do they impair the ability of the District’s retail providers to offer video and other services, including broadband Internet access, but they also threaten the District’s ability to continue its fiber build-out.

⁴ OPASTCO et al Comments at 14.

Moreover, these demands and draconian measures with regard to shared headends are wholly unnecessary. As OPASTCO and NTCA note, any legitimate concerns of programmers with regard to security, billing and other management issues can be addressed in a contract.⁵

Given the strong public policy objective of ensuring competitive access to affordable programming and the widespread availability of advanced communications capabilities, the District joins OPASTCO, NTCA and USTA in urging the Commission to adopt rules preventing programmers from denying programming or otherwise discriminating against systems utilizing shared headends.

II. CONCLUSION

Based on all of the above, the District submits that the Commission should promote the use of shared head-ends, particularly in rural areas, by prohibiting video program suppliers from restricting or otherwise denying access to programming to system with shared headends.

⁵ OPASTCO Comments at 14 and NTCA Comments at 28.

Respectfully submitted,

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